

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NASTASI & ASSOCIATES, INC.,

Plaintiff,

v.

BLOOMBERG, L.P., TURNER
CONSTRUCTION COMPANY.,
EUROTECH CONSTRUCTION CORP.,
DONALDSON ACOUSTICS, CO. INC.,
JAVIER PAULINO, MARILYN
FRANCISCO, ANTHONY GUZZONE,
WILLIAM DALE SUMMERVILLE,
LAUREN ECKHART SMITH, MICHAEL
CAMPANA, RONALD OLSON, VITO
NIGRO, FAY DEVLIN, DUANE ROBERT
DONALDSON, DOUGLAS DONALDSON,
and Does 1-50,

Defendants.

No. 1:20-cv-05428
Hon. Jesse M. Furman

**STIPULATION AND ~~PROPOSED~~
ORDER TO STAY PROCEEDINGS**

Plaintiff respectfully requests, with the consent of Defendants on the terms set forth in this stipulation, a stay of proceedings of Plaintiff's claims here pending a final disposition of Plaintiff's appeal, styled *Nastasi & Associates, Inc. v. Bloomberg, L.P., et al.*, No. 20-1789 (2d Cir.) (the "Appeal").

The basis for this stipulation is as follows:

1. On December 31, 2018, Plaintiff commenced an action against Defendants in this Court, styled *Nastasi & Associates, Inc. v. Bloomberg, L.P., et al.*, No. 18-cv-12361-JMF (S.D.N.Y.) (the "Original Action"), asserting claims of violations of the RICO Act, the Sherman Act, New York's Donnelly Act, and other related claims. Plaintiff filed its First Amended Complaint ("FAC") on May 8, 2019, asserting the same claims. Defendants moved to dismiss the claims asserted in the FAC.
2. On March 11, 2020, the Court issued an order granting Defendants' motions to dismiss based on its finding that Plaintiff lacked standing pursuant to Article III of the U.S. Constitution. *Nastasi & Assocs. v. Bloomberg, L.P.*, No. 18-CV-12361 (JMF), 2020 U.S. Dist. LEXIS 42701 (S.D.N.Y. Mar. 11, 2020). Pursuant to this order, the action was "dismissed in its entirety without prejudice." *Id.* Nastasi moved for reconsideration of this decision, but that motion was denied, and leave to amend was denied, on May 20, 2020. *Nastasi & Assocs. v. Bloomberg, L.P.*, No. 18-CV-12361 (JMF), 2020 U.S. Dist. LEXIS 89217 (S.D.N.Y. May 20, 2020). Nastasi then filed a notice of appeal of these decisions and the Appeal remains pending before the U.S. Court of Appeals for the Second Circuit. Notice of Appeal, ECF No. 186, *Nastasi & Associates, Inc. v. Bloomberg, L.P., et al.*, No. 18-cv-12361-JMF (S.D.N.Y. June 9, 2020).

3. Then, on July 14, 2020, Plaintiff filed this current action, asserting nearly identical claims as in the Original Action, against the same Defendants. The allegations arise out of the same facts and occurrences. According to Plaintiff, this action was commenced to prevent any issues regarding the statute of limitations that could occur if Plaintiff waited to file a new action until after the resolution of the Appeal.
4. Plaintiff has also requested that Defendants waive formal service of a summons in this action. All Defendants have agreed, and by this Stipulation, all Defendants waive formal service of a summons in this action.
5. Given that the allegations, claims, and parties in the Original Action overlap with those here, litigating both matters simultaneously presents a potential waste of judicial resources and a risk of inconsistent results across the two proceedings. In the event that Plaintiff's Appeal is granted, there would be no reason for this action to proceed on the merits, and it could be dismissed in favor of the Original Action.
6. Absent a stay, both the parties and the Court would risk wasting time and resources, to the detriment of all involved. No prejudice or harm would inure to the parties, the Court, or the public if a stay is granted.
7. The parties, through counsel, stipulate to a stay of the proceedings in this action. Therefore, neither side will seek discovery during the pendency of that stay. During the stay, Plaintiff will seek no relief from this Court beyond any relief needed to enforce the terms of this stipulation, and Defendants will not move to dismiss this action.
8. “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

9. Accordingly, Plaintiff, with Defendants' consent, requests the Court to order as follows:
 - a. Proceedings in this case are stayed pending the Second Circuit's resolution of the Appeal;
 - b. The parties shall file a joint status report within fourteen days of the Second Circuit's ruling in the Appeal so that the Court may evaluate the continued appropriateness of a stay at that time; and
 - c. Defendants shall answer, move or otherwise respond to the First Amended Complaint in the Original Action or the Complaint filed in this action no later than sixty (60) days following the Court's decision to dissolve the stay in this action

SO STIPULATED this 17th day of August, 2020.

Respectfully submitted,

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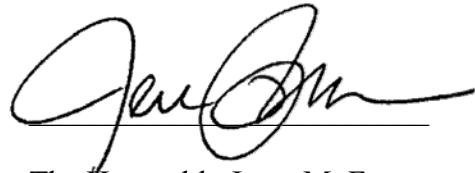
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PROPOSED ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 18, 2020



The Honorable Jesse M. Furman

United States District Judge

The Court sees no reason to keep this case open pending resolution of the appeal. Accordingly, the Clerk of Court is directed to close the case, without prejudice to a motion from any party to reopen the case within 14 days of a decision by the Second Circuit in the related appeal. All conferences are canceled.